DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

Supreme Court of Appeals.

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

SHOWALTER'S EX'RS *v.* SHOWALTER'S WIDOW et al.

Jan. 16, 1908.

[60 S. E. 48.]

1. Wills—Election—Provisions for Wife.—Code 1887, § 2271 [Va. Code 1904, p. 1132], authorizing a widow to elect to waive a provision for her in her husband's will and demand her dower, does not apply to the widow's undivided interest in realty conveyed to her husband and herself, and her undivided one-half interest therein continues to be her property after her renouncing the provisions in the will disposing of the whole of the realty.

2. Same—Evidence of Election.—To raise an inference of election by a widow to accept a provision for her in her husband's will, it must appear that she knew of her right to elect, and had full knowledge of the facts.

3. Same.—To show that a widow elected to accept a provision for her in her husband's will, it was proved that she continued to reside on a tract of land on which she had lived with her husband at the time of his death, and which was given to her by the will for life, and that she had selected and accepted certain personal property specifically bequeathed to her; but it was not proved that she knew of her right of election or had a full knowledge of the facts. Held, that her acts, being equivocal, did not deprive her of her right to waive the provision in the will, and demand her statutory rights.

4. Depositions—Suppression.—Where executors in a suit testified more than once in a case, the court did not err in suppressing their depositions taken over the protest of the adverse party, and sent to the trial judge after the cause had been argued and submitted.

5. Appeal—Harmless Error—Suppression of Depositions.—Error, if any, in suppressing depositions not showing anything which should have influenced the decision of the cause, is harmless.

6. Wills—Election—Requisites—Provisions for Wife—Renunciation.—Under Code 1887, §§ 2271, 2559 [Va. Code 1904, pp. 1132, 1305], authorizing a widow to elect to waive a provision for her in her husband's will and demand her dower, and providing that such renunciation shall be made within one year from the probate of the will by an instrument acknowledged, etc., an instrument executed and acknowledged by a widow within three months after the probate of her husband's will, reciting that she thereby waived the provision made

for her in the will, and elected to take such share of the husband's estate as she would have had, had he died intestate, was a sufficient renunciation of the will, and entitled her to take under the statute.

7. Executors—Distribution—Share of Surviving Wife—Renouncing Will—Time of Payment.—Where there are no unsatisfied debts nor charges superior to the right of the widow as distributee, a decree directing the executors to pay a specified sum to the widow renouncing the provision made for her in her husband's will is not open to the objection that it was prematurely made because of the condition of the administration of the estate.

UZZLE *v.* COMMONWEALTH.

Jan. 23, 1908.

[60 S. E. 52.]

1. Criminal Law—Venue—Change of Venue—Application—Conclusiveness of Facts Alleged—Failure to Deny or Permit Proof.—Where one applying for a change of venue asks to prove the facts alleged, and the prosecution offers to produce evidence to sustain its denial of only one matter set up in the application, and neither party is permitted to introduce any evidence, the other allegations of fact made in the application must be considered as true on such application.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 14, Criminal Law, § 253.]

2. Same—Statutory Provisions—Conditions Precedent to Right.—Under Code 1887, § 4036, as amended by the act approved March 15, 1904 (Laws 1904, p. 307, c. 190 [Code 1904, p. 2126]), providing that the venue for the trial of a criminal case may be changed on motion for good cause, an application based on the ground that such prejudice and excitement existed against the accused as to endanger the fairness and impartiality of a trial conducted in the county need not be preceded by a motion to summon jurors from beyond the county, though, where an application for change is based merely on the ground of difficulty in obtaining jurors free from exception, it must be preceded by an application to summon jurors beyond the county.

3. Same—Good Cause—Local Prejudice.—Where the white people of a county are so greatly aroused against an accused, a colored man, and the relations between the races are such that it became necessary for the Governor to order the military to the place to preserve the public peace and accused was taken by a detail of soldiers to another city to await trial, and the judge of the court where accused was to be tried ordered that a posse comitatus proceed with the sheriff to bring him for trial, and the posse was still retained to proteet him at